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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CLYDE KENNETH DAVIS,

Defendant and Appellant.

E064491

(Super.Ct.No. RIF104003)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed with directions.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Clyde Kenneth Davis, filed a petition for resentencing pursuant to Penal Code section 1170.18,¹ which the court denied.² After defendant filed a

¹ All further statutory references are to the Penal Code unless otherwise indicated.

notice of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and identifying one potentially arguable issue: whether the court erred in denying defendant's petition. We affirm.

I. PROCEDURAL STATEMENT

A jury convicted defendant of two counts of first degree burglary (§ 459, counts 1-2) and one count of receipt of stolen property (§ 496, subd. (a), count 3). The jury additionally found true an allegation as to count 1 that a person other than an accomplice was present during the burglary. (§ 667.5, subd. (c)(21).) The court thereafter found true allegations defendant had suffered two prior prison terms (§ 667.5, subd. (b)), two prior serious felony convictions (§ 667, subd. (a)), and two prior strike convictions (§§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)). The court sentenced defendant to an aggregate term of imprisonment of 61 years to life.³

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² Defendant filed a single petition for three separate cases, RIF104003, RIF084150, and RIF083998. Defendant filed a single appeal as to the former two cases, but no appeal as to the latter case. This court has treated the appeal as two separate cases. The instant case pertains to Superior Court case No. RIF104003. The appeal as to Superior Court case No. RIF084150 is resolved by separate opinion in case No. E064492.

³ The original and amended abstracts of judgment incorrectly reflect that defendant was convicted by court trial. We take judicial notice of our opinion in case No. E033067, the opinion from defendant's appeal of the original judgment. (Evid. Code §§ 452, subd. (a), 459, subd. (a).) Both the minute order of the date of conviction and this court's opinion reflect that defendant was convicted by jury trial. We shall direct the superior court to correct the abstract of judgment.

On December 23, 2014, defendant filed a petition for resentencing pursuant to section 1170.18 seeking reduction of his convictions from felonies to misdemeanors. Defendant asserted that in all the cases in which he had been convicted, the total value of the property stolen was less than \$300, below the threshold for a conviction for grand theft.

The People submitted a response in which they asserted defendant's burglary convictions rendered him ineligible for resentencing. The court granted defendant's petition as to the count 3 offense for receiving stolen property and reduced the conviction to a misdemeanor. The court resentenced defendant accordingly. The court denied defendant's petition as to counts 1 and 2, noting that burglary was not an offense which qualified for resentencing pursuant to section 1170.18.

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues. (See *People v. Acosta* (2015) 242 Cal.App.4th 521, 526 [attempted burglary not within purview of § 1170.18 resentencing].)

III. DISPOSITION

The superior court is directed to correct the abstract of judgment to reflect that defendant was convicted by jury trial. The trial court shall forward a copy of the

corrected abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.